

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of)	
Paxson Spokane License, Inc.)	MM Docket No. 03-15
KGPX(TV), Spokane, WA)	
)	File No. BFRECT-20050210AWF
Negotiated Channel Arrangement for)	
First Round Digital Channel Election)	
)	
To: The Secretary		
Attn: Chief, Media Bureau		

REPLY TO RESPONSE TO REPLY COMMENTS

Paxson Spokane License, Inc. ("Paxson"), licensee of television station KGPX(TV), Spokane, Washington (the "Station"), hereby replies to the late-filed Response of Spokane Television, Inc. ("Spokane Television") and Apple Valley Broadcasting, Inc. ("Apple Valley") ("Joint Commenters") regarding the above-referenced channel election application. The claims advanced by the Joint Commenters in their Response entirely are without merit. The Joint Commenters again fail to raise any substantive or reasonable objection to the election of Channel 43 for the Station. In fact, the out-of-time Response is so untenable, it is exposed to be nothing more than an anti-competitive attempt to prevent the Station from replicating service. The Commission should summarily reject it.

Preliminarily, Paxson notes that the Joint Commenters response was filed without explanation or motion outside of the time periods established by the

Media Bureau in its March 1, 2005 Public Notice.¹ In that Public Notice, the Bureau stated that “parties objecting to or commenting on an NCA must file their pleadings with the Commission no later than March 15, 2005,” with replies to such pleadings due by March 22, 2005.² The Public Notice made no provision for the filing or acceptance of any “responses” to such replies. Joint Commenters’ Response, which was filed on March 28, should therefore be dismissed. If the Commission accepts Joint Commenters’ Response, equity demands that the Commission afford Paxson an opportunity to respond, and the Commission thus should accept this Reply as well.

**The Station Elected Channel 43 Pursuant
to a Valid Negotiated Channel Arrangement**

Station KGPX(TV) is a new “singleton” station at a competitive disadvantage to many other nearby television stations. Because of concerns about post-transition replication, Paxson entered into an NCA to elect Channel 43. The Commission had indicated beforehand to broadcasters that stations could enter into arrangements with other stations in the market to elect an unallotted channel.³ The licensees of six stations signed such an arrangement, and no reasonable objection was received from any party. In its

¹ *Public Notice*, “DTV Channel Election Issues – Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings,” DA 05-519 (Mar. 1, 2005).

² *Id.*

³ This is reflected in a memorandum circulated in the industry entitled “Informal Q&A on Round One Channel Election Agreements And Other Issues Based On Meeting with Media Bureau And OET Staff on January 13, 2005” (“*Informal Memorandum*”).

election form, however, Paxson failed to clearly indicate this, resulting in a number of subsequent filings wherein all parties – except for the Joint Commenters – verified their lack of objection.

Joint Commenters' Unfounded "Objections" Constitute No More Than An Anti-Competitive Attempt to Harm the Station

Joint Commenters – and Joint Commenters alone – are engaged in an anti-competitive attempt to undermine the wishes of numerous parties and prevent the Station from preserving relied-upon service. Unable to articulate a cogent basis for objecting, the Joint Commenters stoop to unseemly mischaracterizations and vulgar allegations in a bald effort to obstruct improved broadcast service and the Commission's processes.

In the Response, the Joint Commenters desperately advance a new basis for "objecting" that is just as unreasonable and illogical as their earlier "objection." Joint Commenters claim in their Response that the Station's election prejudices them by somehow creating a "possibility" that their own elections would be put "in play," supposedly leaving the Joint Commenters at risk of receiving channels other than those they elected.⁴ This new claim is entirely unreasonable and without foundation. The Station's election has in no way created a "possibility" that Joint Commenters' will not receive the channels they elected on their Form 382s. In fact, a review of the Form 382s filed by the Joint Commenters reveals that each of their licensed stations elected to operate post-transition on its

⁴ Response at 5.

currently assigned DTV channel.⁵ The Commission has stated that parties electing their current in-core DTV allotment, as Joint Commenters have done, almost certainly will receive these channels.⁶ Accordingly, the approval (or rejection) of the Station's election of Channel 43 absolutely will have no bearing on the approval of Joint Commenters' elections.

Joint Commenters' empty argument about possible harm is incredibly similar to the previous "objection" about "possible" interference, even though none was predicted. Unbelievably, the Joint Commenters take the opportunity in the Response to re-argue that this particular objection, despite its lack of cogency, stands as a permanent bar to the Station's election, maintaining that it never was "withdrawn" and "fatally contradicts" the election.

Both of these "objections" of course are without merit. As explained in its Reply Comments, Paxson has demonstrated that operation of the Station on Channel 43 would in fact create no interference to Joint Commenters, and they have failed to provide any evidence to the contrary. Similarly, the Joint Commenters' Response again fails to provide any evidence that the Station's election will adversely affect them in any illegitimate way. The Commission presciently anticipated that some stations possibly would attempt to abuse the election process to thwart other stations from improving broadcast service. Accordingly, the Commission informally indicated it would disregard

⁵ See File Nos. BFRECT-20050209ABE (KXLY-TV), BFRECT-20050209AAT (KAPP(TV)), BFRECT-20050209AAP (KVEW(TV)).

⁶ Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report & Order, FCC 04-192, ¶ 46 (rel. Sept. 7, 2004) ("*Second Periodic Review*").

unreasonable objections such as these.⁷ Paxson likewise should not be bound to give them credence. Paxson only can conclude that Joint Commenters' repeated unreasonable claims constitute nothing more than an attempt to prevent new stations from competing fairly with preserved service.

Joint Commenters' Attempt to Mask Their Lack of Substantive Objection By Levying False and Unfounded Accusations Against Paxson Must Fail

Recognizing the lack of any real harm to them and the lack of any legitimate basis for objecting, Joint Commenters endeavor to mask the weakness of their position by mischaracterizing the Station's election as a "bad-faith" attempt to mislead the Commission through "material misrepresentations." Joint Commenters initially attempt to argue that the lack of any harm is irrelevant, but they surely understand that the Commission said it would review these elections on the basis of whether others were adversely affected.⁸ As such, Joint Commenters spill most of their ink attempting to convince the Commission that Paxson's election form is an elaborate deception.

These allegations, though more unseemly, are just as unsupportable as their allegations of harm. Not only is there no deception here, the material facts are not in dispute. At no point in this proceeding has Paxson attempted to mislead the Commission or any other party regarding the existence of a negotiated channel arrangement. As Paxson already has explained in its Reply Comments, a negotiated arrangement did exist consistent with Commission guidance. On January 13, 2005, Paxson informed a number of stations in the

⁷ This also is reflected in the *Informal Memorandum*.

⁸ *Second Periodic Review*, ¶ 45.

Spokane area of its desire to elect Channel 43 for the Station and requested that these parties acknowledge their agreement to this election or inform Paxson of any objections. In response, Paxson received signed acknowledgments from the licensees of six of the stations contacted.⁹ Despite the numerous opportunities to do so presented by this proceeding, the licensees of four of these stations have raised no objection to the existence of a negotiated agreement with Paxson, representing greater participation in the Station's NCA than existed in most, if not almost all other NCAs. As Paxson has already demonstrated in its Reply Comments, an arrangement clearly did exist. Joint Commenters' assertion that there was "no basis whatsoever" for Paxson to claim that a negotiated arrangement existed is incorrect.

In their Response, Joint Commenters repeat the very serious accusation made in their Objection that Paxson has made material misrepresentations to the Commission, and they now go so far as to say that Paxson has in fact acknowledged doing so. This claim is entirely false, and Paxson again denies these spurious allegations. Contrary to Joint Commenters' allegations, Paxson has in no way acknowledged making any material misrepresentation in its Form 382 – nor would it have any reason to have done so, as it did not in fact make any material misrepresentations. If Paxson had intended to misrepresent

⁹ Paxson notes that the licensees of two stations, KWSU-TV and KSPS-TV, have filed comments indicating that they do not believe that they are parties to an NCA with Paxson. At the time Paxson filed the Station's Form 382 it reasonably understood that these licensees believed that they were parties to such an agreement. Neither of these parties has raised any objection to the Station's election.

its position, it certainly would not have alerted stations in the market of its desire to enter into an NCA. The allegations simply are illogical. As Paxson explained in its Reply Comments, the Station listed the parties that it did on its Form 382 to indicate that it had contacted those parties and that none of the listed parties had raised any reasonable objection to the Station's election. In fact, most of the parties listed were not even impacted by the Station's election of Channel 43 but were listed only in a good faith attempt to ensure that all parties even potentially affected were notified. Although Paxson admits here again that it should have expressed its intentions on the form's schedule with greater clarity as some others did, its actions do not rise anywhere near the alleged level of a "material misrepresentation."

Paxson further denies Joint Commenters' astounding accusation that the Station's election was part of a "broader scheme to deceive the FCC," a scheme that Joint Commenters claim to have discovered based on Paxson's channel elections for KFPX(TV), Newton, Iowa, and WEPX(TV), Greenville, North Carolina. It is not clear to Paxson how the Joint Commenters are harmed by Paxson's elections in Iowa and North Carolina, but the objections undoubtedly stand as further evidence of the Joint Commenters' lack of sincerity. The Commission said that elections of unallotted channels were permissible. To allege that such permissible elections stand as a "broader scheme to deceive the FCC" must rank of one of the most disingenuous statements ever uttered in a Commission proceeding.

Joint Commenters lastly accuse Paxson of attempting to procure “special treatment” in the channel election process and not “playing” by the rules. This accusation too is entirely without merit. Paxson has engaged in a course of action that was available to any licensee in the first round of channel elections. The Commission said that any station was free to enter into such an arrangement. The fact that few parties took advantage of this opportunity in no way indicates that Paxson was attempting to procure any special treatment or not “play by the rules.”

Conclusion

Joint Commenters themselves entered into an arrangement in 1998 to obtain their DTV channels.¹⁰ Now they unashamedly seek to deny the same benefit to a new station in the market. The Commission, however, said it would allow stations such as KGPX(TV) to enter into arrangements to elect unallotted channels so long as other stations were not adversely affected, and Paxson obtained more participation in its NCA than almost all others. The Commission further stated that it would examine NCAs for anti-competitive effects, but the only ones present here are those interjected by the Joint Commenters’ baseless attempts to prevent the Station from replicating service.

The Station’s NCA satisfies all of the Commission’s standards, and no station would be adversely harmed by its grant. Accordingly, Paxson urges the Commission to reject all of the comments of the Joint Commenters and

¹⁰ See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Memorandum Opinion & Order of the Sixth Report & Order, 13 FCC Rcd 7418, ¶¶ 228-233 (1998).

respectfully requests that the Commission assign Channel 43 to the Station for post-transition operation.

Respectfully Submitted,

PAXSON SPOKANE LICENSE, INC.

By:



William L. Watson
Secretary

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Dated: April 4, 2005

Certificate of Service

I, CYNTHIA DOWSE, certify that on this 4th day of April, 2005 I caused the foregoing Reply Comments to be served by overnight courier on the following:

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